

North Dakota Department of Health
Division of Health Facilities

LONG TERM CARE ADVISORY
COMMITTEE MEETING MINUTES

August 17, 2006

Committee members and presenters present:

Darleen Bartz, Health Resources Section, ND Department of Health
Bruce Pritschet, Director, Division of Health Facilities
Shelly Peterson, Executive Director, North Dakota Long Term Care Association
Randal Albrecht, ND Board of Examiners for Nursing Home Administrators
Kurt Stoner, Bethel Lutheran Home, Williston
Helen Funk, State Ombudsman, Div. of Aging Services, ND Dept. of Human Services
Dave Remillard, North Dakota Health Care Review, Inc.
Representative Gary Kreidt, ND House of Representatives (New Salem)
Barb Fischer, Medical Services, ND Department of Human Services
Lucille Torpen, Manager, Division of Health Facilities, ND Dept. of Health
Monte Engel, Manager, Division of Health Facilities, ND Dept. of Health
Neil Gulsvig, My InnerView – (conference call)
Kaye Hessinger, Div. of Health Facilities, ND Dept. of Health

Others attending:

Terry Goehring, Administrator, Bottineau Good Samaritan Center

Committee members absent from the meeting:

Maggie Anderson, Medical Services, ND Department of Human Services
Dr. Jonathan Berg, Nursing Home Medical Director's Association
Betty Keegan, Rolette County Social Service Board
Carole Watrel, AARP
Craig J. Lambrecht, MD, State Medical Officer, ND Department of Health
Arvy Smith, Deputy State Health Officer, ND Department of Health

Welcome

A meeting of the Long Term Care Advisory Committee was called to order at 10:00 a.m. on August 17, 2006. Darleen Bartz welcomed everyone to the meeting. She said that Dr. Berg, Arvy Smith, and Maggie Anderson contacted her and were not able to come to the meeting.

Approval of Minutes

Minutes of the June 14, 2006 meeting were approved as distributed. Bruce Pritschet made a motion to approve the minutes; seconded by Shelly Peterson. Motion carried.

Standing Reports

Comments from the ND Department of Health, Division of Health Facilities

Bruce Pritschet talked about the ASPEN Tag Summary Report Top Ten dated August 8, 2006. A copy of this report was provided to the committee. The report lists the most frequently cited health program regulations; and the most frequently cited Life Safety Code regulations. Shelly Peterson indicated that three of the top ten citations relate to medications, and asked what the difference was between F332 and F333. Bruce said that F332 relates to completed medication pass observations; and F333 relates to the techniques used. Any timing issues would be cited under F332. Shelly Peterson said there is a little frustration out in the industry regarding a.m. and p.m. medication issues, which was discussed at a recent meeting in Fargo.

Monte Engel asked for any questions regarding the ASPEN Tag Summary report as it related to Life Safety Code issues. He said that corridor doors (K0018) has a frequency citation of 71 times. Shelly Peterson asked if this relates to a good fit and good seal around the doors. Representative Kreidt feels a lot of this has to do with the weather - the weight and size of the doors versus the conditions. Monte agreed, plus it also relates to holes in the door, a door doesn't latch properly, etc. Shelly Peterson asked if there are any big issues that he sees being cited in facilities where the Association could provide education to the facilities. Monte stated that there isn't anything specific – just Life Safety Code in general. He said that on the Health Department website there are articles and topics dealing with smoke detection, and a number of other compliance issues for the facilities that the Health Department regulates. He encouraged the Association, and facilities, to take a look at these approximately 40 pages of information and offer any comments they might have. Darleen Bartz said that Monte and his staff have been working on resources to provide that might be helpful to the industry. She feels it would be a good topic to mention at the Association meetings, and to make them aware this information is available on the Health Department website.

Bruce Pritschet talked briefly about the Deficiency Count Report dated August 14, 2006 which addresses the average number of deficiencies per survey by scope and severity. This report does not include Life Safety Code, only program citations. Regional statistics related to average deficiencies cited are as follows: Colorado 8.35; Montana 7.83; North Dakota 5.44; South Dakota 4.66; Utah 5.24; and Wyoming 12.85. Denver regional citations total 6.98; and national citations total 6.58. The Double G Citations Report dated August 17, 2006 lists the following statistics for this fiscal year: North Dakota 4; South Dakota 2; Utah 5; Wyoming 1; Colorado 39; and Montana 6. As far as the survey process, Bruce said that North Dakota averages 12.25 months between surveys. Our goal is to have the surveys fall at 12.99 months or less. These all relate to unannounced long term care facility surveys. Bruce also said the rate of complaints has increased the last couple months, especially in hospitals, and that this impacts our surveyor time. In nursing facilities, most complaints are family generated. Terry Goehring asked if some of these folks are private pay that they are holding on to too long. Bruce said that there have always been a few of those.

Monte Engel discussed the role of the state agency in FSES (Fire Safety Evaluation System). He said that most of you are aware of the Life Safety Code, which is a standard developed by the

National Fire Protection Association, including hospitals and nursing homes. FSES is the numerical process to determine equivalent compliance to Life Safety Code requirements. Based on the degree these are met in the facility, you get a numerical number. Life Safety Code and FSES have both been adopted by CMS. As far as the GAO review of the CMS Life Safety Code program, the uncontrolled use of FSES and how the process had worked was left up to the state. Ultimate approval of the FSES is up to the Regional Office. The State Agency will provide the Regional Office with the necessary paperwork. The State Agency does not make a recommendation to the Regional Office regarding FSES. Curt Stoner asked if most of the FSES's would be applied to the facilities that are fully sprinklered. Monte said yes. Curt also asked if Monte knew when the sprinkler law will come into effect. Monte's response was that they are looking at adopting the 2006 edition of the LSC which would require all facilities to be sprinklered, and he assumes there will be a period of time when all facilities would have to be sprinklered. Randal Albrecht asked if this directive from CMS has changed things. Monte said a few issues have accepted FSES in the past. Randal Albrecht questioned if these guidelines are available to the facilities because codes and applications have changed. Shelly Peterson talked about areas such as overhang issues, and feels there should be correspondence from CMS in the form of an actual letter that could be provided to the facilities. Darleen Bartz said communication from the Regional Office is not always shared with the Health Department in a timely fashion, which makes it difficult for us. She said we really don't have anything specific from CMS in writing. Monte stated we usually communicate with the Regional Office up front because the information is so vague.

Dave Remillard feels the state agency probably has the same issues with CMS as the providers have with the state agency regarding inconsistencies. Darleen Bartz again said that the Department has tried to post an information site that providers can go to for information. Monte listed other forms of information which are offered, including newsletters, the Health Department website, conference training, and direct correspondence to facilities.

Comments from the ND Long Term Care Association

Shelly Peterson talked about the regional meetings of the ND Long Term Care Association and other Association areas of business, which included a number of different subject matters:

1. A booklet printed by the Dakota Medical Foundation and Blue Cross/Blue Shield of North Dakota titled, "Advance Health Care Planning Resource Guide for North Dakotans". Shelly feels this is an excellent booklet which applies to everybody, but North Dakotans in general. This reflects changes made during the last legislative session. These are available through the ND Medical Association or the ND Long Term Care Association.
2. Legislative Advocacy – Meeting with legislators and laying a foundation/planning for the next session. Some of the areas of discussion include the inflator rate, staffing issues, and turnover calculation.
3. My InnerView Survey – The Long Term Care Association wanted all facilities to complete the surveys in the May/June timeframe. Shelly said they should have all the results available later in the year.

4. Survey Issues – This included both Life Safety Code and program deficiencies. The Association looks at both sides on these issues. Shelly said that one area concerned dining options, and the use of paper plates for continental breakfasts. There was a deficiency cited in a skilled facility related to treating residents with dignity. She said the residents don't complain. Bruce Pritschet stated that the Regional Office does not consider the use of paper plates acceptable. Shelly asked if CMS could provide a determination on the use of paper plates in the dining room for continental breakfasts, and if it is something that wouldn't have to be cited under dignity. If the Regional Office provides a determination, then the NDLTCA would share this with the providers.
5. Basic Care Committee Meeting – What is the difference between basic care and assisted living. Shelly said that services are delivered all inclusive for basic care, where assisted living is under contract for services. A few of the licensed basic care facilities contract for the services you want, and Shelly questioned if that was OK. Darleen Bartz stated the difference that exists between assisted living and basic care is that in assisted living you would look at the contract between the resident and the facility and expect the contracted services to be delivered by the facility. In basic care, facilities are expected to comply with the licensure rules and to meet the needs of the residents they admit based on the assessment of the resident.

Shelly stated there is no longer a push to combine assisted living and basic care, however, there was discussion regarding memory care units in basic care, and the fact there are no licensure requirements in these units. She said unless you have the dementia diagnosis, you are not allowed in those units. Darleen Bartz said dementia units are not specifically addressed in basic care. For nursing facility residents, secured units are regulated under 33-07-03.2-26 in the Licensing Rules for Nursing Facilities in North Dakota. Under #4, "A resident in a secured unit shall have access to the same services as other residents in the facility including provisions for routine and ongoing access to the outdoors as appropriate based on the resident's past history, personal preferences, and current condition."

Helen Funk said their office has been getting complaints regarding the dementia units. Shelly Peterson asked if this issue should be addressed specifically in basic care. Darleen Bartz said that #4 above in the Licensing Rules for Nursing Facilities in North Dakota addresses secured units, this language is not included in the basic care regulations. Darleen suggested talking to the Basic Care Committee, and that it wouldn't be that difficult to add an area about secured units to the basic care regulations.

6. Allocation issues between basic care, assisted living, and nursing facilities. Shelly said there is a meeting with Barb Fischer next week regarding removing allocation as a barrier so facilities can meet a full continuum of care.
7. Occupancy levels regarding issues on moratorium, and buying/exchanging beds. Darleen Bartz said that 48 months is pretty firm within the statute. She said a facility could transfer again, but the life is 48 months.

Comments from the Ombudsman Program, ND Department of Human Services

Helen Funk distributed a booklet to the committee. This new booklet entitled, “Making Medical Decisions for Someone Else: A North Dakota Handbook” was completed in July by the North Dakota Department of Human Services, Aging Services Division, Long Term Care Ombudsman Program. This booklet is also posted on the Department of Human Services website, which is www.nd.gov/humanservices/.

Helen said a new employee, Michelle Jacob, was hired for the Minot and Williston Human Service areas. Michelle’s office is in Minot at the North Central Human Service Center. Telephone numbers for Michelle are 701.857.8500 or toll free 1.888.470.6968.

The long periods of extreme heat in North Dakota have been a problem for residents and long term care facility staff. Helen said complaints have been minimal despite the heat, but that everyone will appreciate a cooling down period, and the opportunity to enjoy outside activities.

Helen said there have been concerns with residents going from basic care to skilled, and then back to basic care. These residents need to look at more rural facilities, and are having to move a distance away. Some of these people are going through appeals to try to stay in the nursing facilities. Darleen Bartz said that “The View” bought the cottages. Paperwork on voluntary termination of beds at the Commons is what has been received to this date. The Health Department has not received notices that the cottages have closed.

There was discussion regarding issues of discharge for non-payment. Randal Albrecht said we need clarification on this. Barb Fischer summarized the appeal process and what the Department of Human Services is currently working on with appeals, non-payment, resident rights as it relates to a change in medical status, etc.

Legislative Updates on Interim Committees

Representative Gary Kreidt serves on both the Budget Committee on Healthcare and the Human Services committees. He said there are no big issues concerning long term care at the present time. The committees have been dealing with acupuncturists, the Allied Health Board, Human Service Centers, the State Hospital, Peace Garden, and many other facilities around the state. Representative Kreidt said there is more money in the budget this year. There will be a meeting next month in Bismarck and that should pretty much conclude the activities for the interim. He said the Allied Health Board and the acupuncturists may have some legislation in the upcoming session.

Update on Board of Nursing Advisories

Darleen Bartz talked about the letter of concern to the Board of Nursing regarding the advisories. She said this has not gone out but has been drafted. Bruce Pritchet prepared the draft letter for the committee to discuss. Darleen asked which members of the committee would like to have their names on this letter. Darleen said the Board of Nursing did have a board meeting. Darleen presented comments at this meeting, as well as several other individuals.

There really was no reaction from the Board after the comments were presented. Shelly Peterson expressed concern about limiting the scope of practice of the LPN, and that the impact of this is that you would have to have around the clock RNs. Shelly said that she and Roseanne Schmidt held a meeting with the Board of Nursing last week. The Board agreed to change the advisory at their September meeting. Darleen Bartz asked the group if they still feel there is a need to send a letter to the Board of Nursing. Kurt Stoner said it sounds like you are still wondering about some of these issues. Representative Kreidt felt this group should contact the Board of Nursing stating that they should not be using our name as one of the organizations. He feels the Board of Nursing has difficulty understanding the law, and following the law. He suggested the statement on the bottom of the draft letter should be removed because it is somewhat misleading. Darleen Bartz said that Shelly Peterson and Bruce Pritschet will work to get some final thoughts together. She felt this should be done fairly quickly. Members of the committee will be sent a final copy of the letter and asked to let the department know if they agree to have their names added to the list when the letter goes out.

Discussion on Possible Facilitators

Darleen Bartz contacted Dr. Brosseau and left him some information about the Long Term Care Advisory Committee. Since his name first came up as a possible facilitator, he is no longer part of the School of Medicine. He is currently with Altru. She will get back in touch with Dr. Brosseau one more time. He is still a potential facilitator, but there hasn't been a commitment.

Psycho-Social Education to Industry

Shelly Peterson talked about the training "New CMS Survey Process: Activities and Psychosocial Severity Guidance" that was presented on August 10, 2006. She said there were over 200 participants, and more attended than were registered. Community members who attended the session said it was very good.

Update on My InnerView

Neil Gulsvig, a former licensed nursing home administrator in North Dakota, is currently founder and president of My InnverView. He provided the committee with the status of the My InnerView survey. He said 53 facilities have completed the family satisfaction surveys, and three other facilities have data coming in. Ten facilities have gone silent since the data was sent out. Shelly Peterson asked if we could get their names so we can move forward and contact those facilities. Neil Gulsvig said he would furnish that information. Overall, he said there was a 40% response rate to this date. Thirty-five facilities chose to complete the resident survey as well as the family surveys. Thirty-two facilities participated in the employee surveys. Mr. Gulsvig said that once all of the results are in, Dr. Grant will be putting the data together and submitting the results of the survey. Shelly Peterson said that at the Fall Conference of the NDLTCA, they are looking at including the report from Dr. Grant. They would like to get the ten other facilities on board before then. Mr. Gulsvig said they can prepare an addendum to this report to include with the initial report to present at the Fall Conference. A copy of the national report on the family satisfaction survey will be provided to Darleen Bartz by Mr. Gulsvig. The 2006 national report will include the North Dakota statistics. Mr. Gulsvig stated that the action

planning process is available on the website to put together a work plan for improvement. Darleen Bartz thanked Neil Gulsvig for the update and said the committee looks forward to the report in September.

Unforeseen Expenses

Barb Fischer discussed unforeseen expenses. She said that one-time adjustments are not used very frequently. There is a mechanism for certification deficiencies. One-time Adjustments to Nursing Facility Rates include:

1. Certification Standards
 - Cited deficiency required to be corrected
 - Can't have reduced costs or staff in previous year
 - Must identify new staff or other costs
 - Additional rate increase must be used for requested purpose
2. Historical Cost Adjustment
 - Facility is significantly below minimum care related standards
 - In excess of reallocation of costs and efficiency incentives
 - Additional rate increase must be used for requested purpose
3. Unforeseen Expenses – This could be used when it is:
 - Beyond control of management
 - Unforeseeable
 - Not a result of industry or business trends
 - Additional rate increase must be used for requested purpose
4. Disaster Recovery
 - Evacuation of residents must occur
 - Capitalized costs amortized over 60 months
 - Insurance recovery costs reduce disaster costs

Gary Kreidt talked about heating issues in nursing facilities and if there would be a harsh winter. Shelly Peterson said heating costs went up 30% but their utilization was so low due to the mild winter this past winter.

Other / Discussion from Previous Meeting Agenda

Darleen Bartz talked about reports coming through from CMS using the terms “user fees” for survey and certification. The budget requested for survey and certification is so minimal that they don't have the money to give to the states to do survey and certification work. She said she just wanted to create awareness that this is being discussed. Some areas impacted are revisits resulting from the certification surveys, and complaint investigations.

Darleen Bartz said staffs from the Bureau of Criminal Investigation were not available to present information on criminal background checks. This will be part of the agenda for the next

meeting. Bruce Pritschet gave a short presentation to the Silver Haired Legislature on the background checks. There are now about eight states involved in the pilot project, which will be completed by 2007. We will see what comes of this at that point. The Silver Haired Legislature is interested in background checks for assisted living.

Bruce Pritschet briefly discussed the post survey evaluation process, which is now web based and working well. We have received responses back from a number of facilities.

Darleen Bartz talked about sex offender rights and said that CMS has not changed their position on this. We are not able to limit their activity and movement within the facility. Shelly Peterson said facilities are trying to be much more aware who has been a sex offender. They can check on the website. Level 3 is a pretty poor risk.

Darleen Bartz presented a handout to the committee regarding the Informal Dispute Resolution (IDR) process, which included the states within Region VIII (North Dakota, Colorado, Montana, South Dakota, Wyoming, and Utah). This information was gathered from Region VIII as to how the different states are handling the IDR process. This information is obtained from the fiscal year ending in 2005. Darleen said the information was requested by us, and it was obtained from states at the CMS Region VIII Director's Conference. The tag sustaining rate for North Dakota is at 50%, which is very close to the other states in the Region. Representative Kreidt asked if CMS sends out guidelines as to how this is set up for each state. Darleen stated that this is contained in the Code of Federal Regulations.

Next Meeting and Suggestions for Future Agenda Items

The next meeting of the Long Term Care Advisory Committee was set for Thursday, November 16, 2006. Subsequently, this meeting was rescheduled to Tuesday, November 21, 2006 from 10:00 a.m. to 3:00 p.m. in Room 212 of the Health Department. Suggested agenda items for future meetings include:

- Standing Reports
 - Division of Health Facilities
 - ND Long Term Care Association
 - Ombudsman, Department of Human Services
- Legislative Updates
 - Interim Committees
 - Upcoming Bills
- Board of Nursing Advisories
- Criminal Background Checks – BCI
- Water Temperatures
- Nurse Shortage

The meeting adjourned at 3:10 p.m.